

Federal Communications Commission

SEP 9 DA 04-2858

Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCH

In the Matter of)
)
Reclassification of License)
of FM Station WKIS, Boca Raton, Florida) RM-10823
and WHYI-FM, Fort Lauderdale, Florida)

ORDER TO SHOW CAUSE

Adopted: September 1, 2004

Released: September 3, 2004

Comment Date: October 18, 2004

By the Assistant Chief, Audio Division:

1. Before the Audio Division is a Petition for Rule Making filed by Charles Crawford ("Petitioner"), requesting the allotment of Channel 262A at Lake Park, Florida, as that community's first local aural transmission service. To accommodate this allotment, Petitioner also requests the reclassification of FM Station WKIS, Channel 260C, Boca Raton, Florida and WHYI-FM, Channel 264C, Fort Lauderdale, Florida, to specify operation as Class C0 facilities.¹ Both FM Stations are subject to reclassification as Class C0 facilities, since they are both operating below the minimum Class C antenna height requirements of at least 451 meters HAAT.²

2. Section 316(a) of the Communications Act of 1934, as amended, permits the Commission to modify an authorization if such action is in the public interest.³ Further, pursuant to Section 316(a), we are required to notify the affected station of the proposed action, as well as the public interest reasons for the action, and afford at least 30 days to respond. This procedure is set forth in Section 1.87 of the Commission's rules.⁴ In this instance, a Class C0 reclassification for FM Station WKIS at Boca Raton and Station WHYI-FM at Fort Lauderdale would accommodate the Petitioner's request to allot Channel 262A to Lake Park, Florida, as that community's first local aural transmission service. Therefore, the Petitioner's request has sufficient public interest benefits and justifies the issuance of an order to show cause.

¹ FM Station WKIS currently operates on Channel 260C with an effective radiated power ("ERP") of 100 kilowatts at 300 meters height above average terrain ("HAAT"). Station WHYI-FM currently operates on Channel 264C with an effective radiated power ("ERP") of 100 kilowatts at 307 meters HAAT.

² See 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, 15 FCC Rcd 21,649 (2000) ("Second Report and Order"), and 47 C.F.R. §§ 1.420(g), n. 2, and 73.3573, n. 4.

³ 47 U.S.C. § 316(a).

⁴ See *Modification of FM and Television Licenses Pursuant to Section 316 of the Communications Act*, 2 FCC Rcd 3327 (1987).

3. The reclassification of a Class C FM station to a Class C0 station may be initiated through the filing of a petition for rule making to amend the FM Table of Allotments.⁵ In instances where an initiating petition proposes amending the FM Table of Allotments in addition to the proposed reclassification of a Class C FM station, the Commission must issue an order to show cause as set forth in Section 73.3573, note 4, of the Commission's rules. In such circumstances, a notice of proposed rule making will be issued only after the reclassification issue has been resolved.

4. A petitioner proposing both amendment of the FM Table of Allotments and reclassification of a Class C FM station must certify that no alternative channel is available for the proposed service.⁶ Petitioner has submitted such certification. Therefore, in order to comply with the Commission's Class C0 reclassification procedures, we must issue this *Order to Show Cause* directed to WKIS License Limited Partnership ("WKIS License"), licensee of FM Station WKIS at Boca Raton and Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), licensee of Station WHYI-FM at Fort Lauderdale. As such, WKIS License is required to show cause why its license should not be modified to specify operation on Channel 260C0 in lieu of Channel 260C at Boca Raton. In addition, Clear Channel is required to show cause why its license should not be modified to specify operation on Channel 264C0 in lieu of Channel 264C at Fort Lauderdale.

5. The license for FM Station WKIS (File No. BLH-19871216KH) at Boca Raton, can be modified to Channel 260C0 at its current authorized transmitter site located at coordinates 25-59-34 NL and 80-10-27 WL. Pursuant to 47 C.F.R. Section 1.87, WKIS License, may, no later than October 18, 2004 file a written statement showing with particularity why its respective license (File No. BLH-19871216KH) should not be modified as proposed in this *Order to Show Cause*. Moreover, the license for Station WHYI-FM (File No. BMLH-19940613KB) at Fort Lauderdale, can be modified to Channel 264C0 at its current authorized transmitter site located at coordinates 25-57-59 NL and 80-12-33 WL. Pursuant to 47 C.F.R. Section 1.87, Clear Channel, may, no later than , 2004 file a written statement showing with particularity why its respective license (File No. BMLH-19940613KB) should not be modified as proposed in this *Order to Show Cause*.

6. The Commission may call on WKIS License and Clear Channel to furnish additional information. If WKIS License or Clear Channel raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modifications, deny the modifications, or set the matter of modifications for hearing. If no written statement is filed by the date referred to above, WKIS License and Clear Channel will be deemed to have consented to the modification as proposed in this *Order to Show Cause* and a final *Order* will be issued by the Commission, if the channel modification is found to be in the public interest.

7. If WKIS License or Clear Channel chooses to seek authority to modify its respective facilities, an acceptable application for a construction permit to increase their facilities to an antenna height of at least 451 meters HAAT for FM Station WKIS and Station WHYI-FM must be filed with the Commission within

⁵ *Second Report and Order, supra*, and 47 C.F.R. § 1.420, n.2.

⁶ See 47 C.F.R. §§ 73.3573, n. 4 and 1.420(g), n.2. See also *Second Report and Order*, 15 FCC Rcd at 21,662, ¶ 26.

180 days subsequent to the show cause response due date (October 18, 2004). Upon the filing of an acceptable construction permit application, the proposal to allot Channel 262A at Lake Park, will be dismissed. The present three-year construction period will be applicable if a construction permit is obtained by FM Station WKIS for Channel 260C and Station WHYI-FM for Channel 264C, as specified herein, under this procedure. If the construction is not completed as authorized, FM Station WKIS and Station WHYI-FM are subject to reclassification automatically as a Class C0 stations, and, in that event, a new petition for rule making to allot Channel 262A at Lake Park, may be refiled.

8. IT IS FURTHER ORDERED, That the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL Send a copy of this *Order to Show Cause* by Certified Mail, Return Receipt Requested, to the following licensee and its counsel:

WKIS License Limited Partnership
Attention: George G. Beasley, Trustee
3033 Riviera Drive, Suite 200
Naples, Florida 34103

Dorann Burkin, Esq.
Counsel, Clear Channel Broadcasting Licenses, Inc.
Wiley Rein & Fielding, LLP
1776 K Street, NW
Washington, DC 20006

9. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau